

## CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Aina'e Co., Ltd., licensee of Station KLEI(TV), Kailua-Kona, Hawaii, hereby enter into this Consent Decree for the purpose of resolving and terminating an Investigation relating to compliance by the Station with the Act and the Rules, as defined below.

2. For purposes of this Consent Decree the following definitions shall apply:

- (a) “*Act*” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*;
- (b) “*Adopting Order*” means an order of the Bureau adopting this Consent Decree, without any modifications adverse to Aina'e Co. or the Station;
- (c) “*Aina'e Co.*” means Aina'e Co., Ltd.;
- (d) “Applications” means, collectively:
  - (i) the application (File No. BRCT-19990129KG) filed by Aina'e Co. on January 29, 1999, seeking renewal of the Station's license (the “1999 Renewal Application”);
  - (ii) the application (File No. BALCT-19980731KF) filed by Aina'e Co. on July 31, 1998, seeking consent to the assignment of the Station's license to Newport Broadcasting Co., Inc. (“Newport”) (the “1998 Assignment Application”); and
  - (iii) the application (File No. BRCT-20061002BWS) filed by Aina'e Co. on October 2, 2006, seeking renewal of the Station's license (the “2006 Renewal Application”);
- (e) “*Bureau*” means the FCC's Media Bureau;
- (f) “*Commission*” or “*FCC*” means the Federal Communications Commission;
- (g) “*Effective Date*” means the date on which the Bureau releases the Adopting Order;
- (h) “*Investigation*” means any investigation by the Bureau of possible violations of the Act or the Rules by Aina'e Co. or the Station;
- (i) “*Parties*” means Aina'e Co. and the Bureau;
- (j) “*Rules*” means the Commission's regulations found in Title 47 of the Code of Federal Regulations; and
- (k) “*Station*” means Station KLEI(TV) (Facility ID No. 664), licensed to Kailua-Kona, Hawaii.

## **I. BACKGROUND**

3. In the 1999 Renewal Application, Aina'e Co. represented that, in preparing that application, it was unable to locate files or records from which it could formulate responses to Section III, Items 1, 2, 5, and 6 of the then-current version of FCC Form 303-S. Consequently, Aina'e Co. represented that it could not confirm that the documentation required by Section 73.3526 of the Rules had been placed in the Station's local public inspection file at the appropriate times, that Annual Employment Reports and Ownership Reports had been filed with the Commission in a timely manner, that it had complied with the children's programming commercial limits set forth in Section 73.670 of the Rules, or that it had complied with the children's programming requirements of Section 73.671 and 73.673 of the Rules. Additionally, Aina'e Co. represented in the 1999 Renewal Application that the Station had been dependent on a number of different stations for its programming, and, as a result, the Station's programming and operational history during the license term ending on January 31, 1999, had been sporadic.

4. Upon review of the 1999 Renewal Application, the Bureau was unable to determine that grant of that application as submitted would be in the public interest, convenience and necessity. The 1999 Renewal Application remains pending before the Bureau.

5. In the 2006 Renewal Application, Aina'e Co. certified affirmatively to the compliance questions presented in Section IV of FCC Form 303-S relating to the Station's operation during the preceding license term (*i.e.*, since February 1, 1999).

6. The Station is the only local, full-power broadcast television station operating on the Kona Coast of Hawaii. Its continued existence as a source of, *inter alia*, emergency information is vital to that area, whose population is constantly at risk from a range of dangerous natural conditions, which include volcanic activity (a problem which includes not only the destructive threat of violent eruption and/or lava flow, but also "vog," a form of sustained, potentially hazardous, volcanic air pollution not necessarily associated with any particular eruption), earthquakes, tsunamis, hurricanes, and other potentially devastating events.

7. The 1998 Assignment Application, in which Aina'e Co. sought consent to assign the Station's license to Newport, remains pending before the Bureau, which has deferred action on that application because of its Investigation of the matters discussed in Paragraph 3.

8. The Bureau and Aina'e Co. acknowledge that any proceedings that might result from the Investigation will be time-consuming and will require substantial expenditure of public and private resources.

9. In order to conserve such resources, and to ensure the continued existence of a local, full-power broadcast television station serving the Kona Coast of Hawaii, the Bureau and Aina'e Co. are entering into this Consent Decree in consideration of the mutual commitments made herein.

## **II. AGREEMENT**

10. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau by incorporation of such provisions by reference in an Adopting Order.

11. The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent

Decree shall have the same force and effect as any other orders of the Commission, and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

12. Aina'e Co. agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

13. The Parties agree that this Consent Decree is for settlement purposes only, that it does not constitute either an adjudication on the merits or a factual or legal finding regarding compliance or noncompliance by Aina'e Co. with the requirements of the Act and the Rules in connection with the matters discussed in Paragraph 3, and that, by entering into this Consent Decree, Aina'e Co. makes no admission of liability or violation of any such requirements.

14. As part of the Adopting Order, the Bureau shall terminate the Investigation. From and after the Effective Date, the Bureau shall not, either on its own motion or in response to any petition to deny or other third-party complaint or objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Aina'e Co. based in whole or in part on the matters discussed in Paragraph 3. Without limitation to the foregoing, the Bureau shall not use the facts of this Consent Decree or the Investigation for any purpose relating to Aina'e Co., and shall treat all such matters as null and void for all purposes.

15. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against Aina'e Co., in the event of any alleged future misconduct for violation of the Act or the Rules, consistent with the provisions of this Consent Decree.

16. Aina'e Co. will make a voluntary contribution to the United States Treasury in the amount of Fifteen Thousand Dollars (\$15,000) within thirty (30) days after the Effective Date. Aina'e Co. will make this contribution without further protest or recourse, by check or similar instrument, payable to the order of the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA No. 043000261, receiving bank Mellon Bank, and Account No. 911-6106. The payment should reference the Acct. No. and FRN No. referenced in the caption of the attached Adopting Order.

17. The Bureau agrees to grant the Applications after the Effective Date, provided that:

- (i) Aina'e Co. has fully and timely satisfied its obligation to make the voluntary contribution to the United States Treasury in the manner specified in Paragraph 16; and
- (ii) there are no matters, other than those discussed in Paragraph 3, that could preclude grant of the Applications.

18. Aina'e Co. will take all steps necessary to consummate assignment of the Station's license to Newport no later than ninety (90) days following grant of the 1998 Assignment Application.

19. Aina'e Co. waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided no modifications are made to the Consent Decree adverse to Aina'e Co. or the Station. If the Commission, or the United States acting on its behalf, brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, Aina'e Co. will not contest the validity of this Consent Decree or of the Adopting Order, and will waive any statutory right to a trial *de novo*. If Aina'e Co. brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, the Commission will not contest the validity of this Consent Decree or the Adopting Order.

20. In the event that this Consent Decree is rendered invalid in any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. Aina'e Co. hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

22. Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

23. This Consent Decree may be executed in any number of counterparts (including by facsimile), each of which, when so executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

**FEDERAL COMMUNICATIONS COMMISSION  
MEDIA BUREAU**

By: \_\_\_\_\_  
Monica Desai, Chief  
Date:

**AINA'E CO., LTD.**

By: \_\_\_\_\_  
Christopher J. Racine, President  
Date: